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Supreme Court, U.S.
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No. 90-805

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WESTERN STATES PETROLEUM ASSOCIATION;
NATIONAL OCEAN INDUSTRIES ASSOCIATION,

Petitioners,

v.

SONOMA COUNTY, SAN MATEO COUNTY,
MONTEREY COUNTY, SAN LUIS OBISPO COUNTY,
COUNTY OF SANTA CRUZ, CITY AND COUNTY OF
SAN FRANCISCO, CITY OF MONTEREY,
CITY OF MORRO BAY, CITY OF
SAN LUIS OBISPO and CITY OF SANTA CRUZ,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent City and County of San Francisco (San Francisco) opposes the petition of Western States Petroleum Association and National Ocean Industries Association (Petitioners) for a writ of certiorari to review the judgment of the

United States Court of Appeals for the Ninth Circuit in this case, the opinion of which is reported at 905 F.2d 1287 (9th Cir. 1990). Petitioners have failed to present any appropriate basis for review of the decision of the Ninth Circuit Court of Appeals. San Francisco agrees with and fully supports the arguments for denial of the petition for writ of certiorari set forth in its co-respondents' opposition to the petition.

In addition to the reasons for denial set forth in the co-respondents' opposition brief, the petition should be denied with regard to San Francisco because the ordinance Petitioners have challenged has expired by its own terms. The challenged ordinance (see Petition for Writ of Certiorari, Appendix J, p. 164a) was enacted by the San Francisco electorate on November 4, 1986. The ordinance provided for a temporary moratorium on the development of certain facilities within San Francisco for a period of two years following enactment.

The ordinance, in accordance with its terms, was extended twice by legislative action of San Francisco's Board of Supervisors. The last action of the Board of Supervisors extended the ordinance to April 1, 1990. No further action was taken to extend the expiration date of the ordinance. Consequently, San Francisco's challenged ordinance expired by its own terms, thus rendering moot any questions as to its validity.

A challenge to the validity of a law becomes moot where that law has expired by its own terms or has been repealed. Burke v. Barnes, 479 U.S. 361, 363 (1987); Diffenderfer v. Central Baptist Church of Miami, Florida, Inc., 404 U.S. 412, 414-415 (1972) (per curiam).

In Burke, the Supreme Court considered a challenge to the "pocket veto" of a bill which lapsed by its own terms by the time the case reached the Supreme Court. The Court deemed the act a "dead letter" and held that "any issues concerning whether [the bill] became a law were mooted when that bill expired by its own terms." Burke, supra, 479 U.S. at 363-364.

Similarly, in the instant case, issues raised by Petitioners concerning the validity of San Francisco's ordinance were mooted when the ordinance expired by its own terms on April 1, 1990. Expiration of San Francisco's ordinance renders moot any questions as to the ordinance's validity. As in Burke, Petitioners fail to state a live case or controversy, as required by Article III of the Constitution.

San Francisco respectfully urges the Court to deny the petition for writ of certiorari.

Respectfully submitted,

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Date Submitted: December 26, 1990